

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

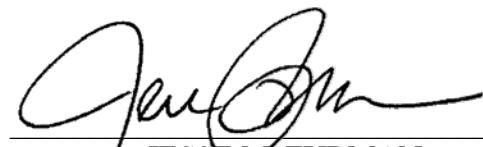
-----X
GUANGFU CHEN, et al., :
Plaintiffs, : 19-CV-11895 (JMF)
-v- :
MEMORANDUM OPINION
AND ORDER
MATSU FUSION RESTAURANT INC., et al., :
Defendants. :
-----X

JESSE M. FURMAN, United States District Judge:

Upon review of the parties' papers, Defendant Huiyin Lam's motion to dismiss the Second Amended Complaint is DENIED. The allegations in the Second Amended Complaint — which, at this stage, must be assumed to be true — are plainly sufficient to support claims against Lam as an employer. *See ECF No. 118, ¶¶ 21-43; see also, e.g., Ocampo v. 455 Hosp. LLC*, No. 14-CV-9614 (KMK), 2021 WL 4267388, at *6 (S.D.N.Y. Sept. 20, 2021) (noting that “[t]he Second Circuit has interpreted ‘employment for FLSA purposes as a flexible concept to be determined on a case-by-case basis by review of the totality of the circumstances’” and summarizing the applicable tests (quoting *Barfield v. N.Y.C. Health & Hosps. Corp.*, 537 F.3d 132, 141-42 (2d Cir. 2008))). Contrary to Lam's assertions, the fact that many of these allegations were added in response to her earlier motion to dismiss is of no moment; that was literally the point of the amended complaint. *See also* ECF No. 111 (granting leave to amend “to address issues raised by the [earlier] motion to dismiss”). Nor, contrary to Lam's suggestions, are the new allegations inconsistent with the allegations in the earlier complaint — let alone in a way or to a degree that would defeat Plaintiffs' claims. Accordingly, the motion is DENIED. The Clerk of Court is directed to terminate ECF No. 123.

SO ORDERED.

Dated: October 21, 2021
New York, New York



JESSE M. FURMAN
United States District Judge